



**Europäische Akademie für
Informationsfreiheit und
Datenschutz**

Bismarckallee 46/48
D-14193 Berlin

**Comments on Guidelines 9/2020 on relevant and reasoned objection under Regulation
2016/679 (Version 1.0)**

adopted by the EDPB on 8 October 2020 (for public consultations)

I welcome the publication of these Guidelines by the European Data Protection Board. They provide for important and helpful practical advice when applying Art. 4 (24) and Art. 60 (4, 5) of the GDPR. I would like to make three comments in order to further clarify the text:

1. Para. 15 seems to be incomplete (possibly a typo). At the end of the phrase „are irrelevant“ or another wording to this effect should be inserted.

2. Para. 28 in its present wording suggests that there is always a clear-cut distinction between investigations triggered by complaints or reports by concerned supervisory authorities on one hand and ex officio investigations on the other. It is however conceivable that a complaint or report leads the addressed supervisory authority to initiate an ex officio investigation into processing of personal data which goes well beyond the original complaint or report because a systematic disregard of legal requirements has come to light when following up the original complaint or report. Nothing in the Regulation seems to prevent the supervisory authority to launch a broader ex officio procedure which cannot reasonably be separated from the original complaint or report. This could be reflected in the text by an inserted phrase before the sentence beginning „As mentioned above,...“ along these lines:

„The same applies in cases where a supervisory authority dealing with a complaint or report by another authority takes the view that an ex officio investigation is necessary to deal with systematic compliance issues going beyond the specific complaint or report.“

3. With regard to paras. 44 et seq. of the Guidelines two observations should be made:

The Guidelines in para. 44 rightly stress that „an objection demonstrating risks posed to the free flow of personal data, but not to the rights and freedoms of data subjects, will not be considered as meeting the threshold set by Article 4(24) GDPR.“ This is in line with the aim of



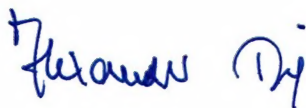
the Union legislature to prevent any barrier to transborder flows of personal data within the European Union as long as they are processed in accordance with the Regulation.

Paras. 47 and 48 do not seem to fully reflect this reasoning and should therefore be clarified.

The example of „language requirements“ in para. 47, although it is linked to a specific region within the EU, could be misunderstood to the effect that any language requirement is not in line with the GDPR and therefore poses a risk to the free flow of personal data. Art 12 (1) GDPR requires the information of the data subject with regard to his rights in „a concise, transparent, intelligible and easily accessible form, using clear and plain language.“ Although this probably does not entail a strict legal obligation of a controller from outside the EU to inform the data subject in his mother tongue it seems appropriate for supervisory authorities to consider such an „expectation“ to be at least a best practice. Therefore the example of language requirements in para. 47 should either be deleted or further clarified to avoid misunderstandings.

In para. 48 of the Guideline the EU level playing field is invoked. This is correct in principle. However, a reference should be made to areas (sectors of processing) where the Union legislature has left certain balancing decisions to Member States (e.g. in the field of freedom of expression and freedom of information as well as access to documents, Arts. 85 and 86 GDPR). It seems therefore advisable to modify para. 48 by adding a reference to such areas where Member States have been given certain room for manoeuvre by the GDPR itself.

Berlin, 9 November 2020



Alexander Dix

Vice-Chair of the Board

European Academy for Freedom of Information and Data Protection